

**§ 15A-544.5. Setting aside forfeiture.**

(a) Relief Exclusive. – There shall be no relief from a forfeiture except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified in subsections (c) and (d) of this section. Subsections (f), (g), and (h) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside. – Except as provided by subsection (f) of this section, a forfeiture shall be set aside for any one of the following reasons, and none other:

- (1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.
- (2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.
- (3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.
- (4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question as evidenced by a copy of an official court record, including an electronic record.
- (5) The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.
- (6) The defendant was incarcerated in a unit of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear as evidenced by a copy of an official court record or a copy of a document from the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or Federal Bureau of Prisons, including an electronic record.
- (7) The defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, or any time between the failure to appear and the final judgment date, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

(c) Procedure When Failure to Appear Is Stricken. – If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any forfeiture of that bail bond. When an order setting aside a forfeiture is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

- (1) At any time before the expiration of 150 days after the date on which notice was given under G.S. 15A-544.4, any of the following parties on a bail bond may make a written motion that the forfeiture be set aside:
  - a. The defendant.
  - b. Any surety.
  - c. A professional bondsman or a runner acting on behalf of a professional bondsman.
  - d. A bail agent acting on behalf of an insurance company.The written motion shall state the reason for the motion and attach to the motion the evidence specified in subsection (b) of this section.
- (2) The motion shall be filed in the office of the clerk of superior court of the county in which the forfeiture was entered. The moving party shall, under G.S. 1A-1, Rule 5, serve a copy of the motion on the district attorney for that county and on the attorney for the county board of education.
- (3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.
- (4) If neither the district attorney nor the attorney for the board of education has filed a written objection to the motion by the twentieth day after a copy of the motion is served by the moving party pursuant to Rule 5 of the Rules of Civil Procedure, the clerk shall enter an order setting aside the forfeiture, regardless of the basis for relief asserted in the motion, the evidence attached, or the absence of either.
- (5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.
- (6) If at the hearing the court allows the motion, the court shall enter an order setting aside the forfeiture.
- (7) If at the hearing the court does not enter an order setting aside the forfeiture, the forfeiture shall become a final judgment of forfeiture on the later of:
  - a. The date of the hearing.
  - b. The date of final judgment specified in G.S. 15A-544.6.
- (8) If at the hearing the court determines that the motion to set aside was not signed or that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to sign the motion or attach the required documentation was unintentional. A motion for sanctions and notice of the hearing thereof shall be served on the surety not later than 10 days before the time specified for the hearing. If the court concludes that a sanction should be ordered, in addition to ordering the denial of the motion to set aside, sanctions shall be imposed as follows: (i) twenty-five percent (25%) of the bond amount for failure to sign the motion; (ii) fifty percent (50%) of the bond amount for failure to attach the required documentation; and (iii) not less than one hundred percent (100%) of the bond amount for the filing of fraudulent documentation. Sanctions awarded under this subdivision shall be docketed by the clerk of superior court as a civil judgment as provided in G.S. 1-234. The clerk of superior court shall remit the clear proceeds of the sanction to the county

finance officer as provided in G.S. 115C-452. This subdivision shall not limit the criminal prosecution of any individual involved in the creation or filing of any fraudulent documentation.

(e) Only One Motion Per Forfeiture. – No more than one motion to set aside a specific forfeiture may be considered by the court.

(f) Set Aside Prohibited in Certain Circumstances. – No forfeiture of a bond may be set aside for any reason in any case in which the surety or the bail agent had actual notice before executing a bail bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed. Actual notice as required by this subsection shall only occur if two or more failures to appear are indicated on the defendant's release order by a judicial official. The judicial official shall indicate on the release order when it is the defendant's second or subsequent failure to appear in the case for which the bond was executed.

(g) No Final Judgment After Forfeiture Is Set Aside. – If a forfeiture is set aside under this section, the forfeiture shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. – An order on a motion to set aside a forfeiture is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions the court considers appropriate. (2000-133, s. 6; 2007-105, s. 1; 2009-437, ss. 1, 1.1, 2; 2011-145, s. 19.1(h); 2011-377, ss. 6-8; 2011-412, s. 4.2(a)-(c); 2012-83, s. 26; 2013-139, ss. 3, 4; 2017-186, s. 2(zz); 2018-120, s. 6.1(a).)